

Editor's note: Appealed -- stipulated dismissal (mooted by private relief bill), Civ. No. C-76-257 (D.Utah)

CONSTITUTION PETROLEUM COMPANY, INC., ET AL.

IBLA 76-449

Decided June 30, 1976

Appeal from decision of Utah State Office, Bureau of Land Management, denying petition for reinstatement of oil and gas leases U-12871, U-12872, U-12874 through U-12878 and U-12881.

Affirmed.

1. Oil and Gas Leases: Reinstatement

An oil and gas lease which has terminated by operation of law due to late payment of the annual rental may be reinstated only when the lessee shows that his failure to pay the rental on or prior to the anniversary date was justifiable or not due to a lack of reasonable diligence. Mailing the payment after noon on the day the payment is due shows a lack of reasonable diligence. Belief that the payment would arrive on time if deposited in a "special box" does not justify the late payment.

APPEARANCES: Grant C. Aadnesen, Esq., and Mitchell Melich, Esq., of Ray, Quinney and Nebeker, Salt Lake City, Utah, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Constitution Petroleum Company, Inc., Arrow Petroleum Company and East Utah Mining Company, appeal from a decision of the Utah State Office, Bureau of Land Management, dated December 15, 1975,

denying their petition for reinstatement of eight oil and gas leases U-12871 etc. 1/ The basis for the denial was appellants' failure to exercise reasonable diligence in mailing the rental payment, as required by 30 U.S.C. § 188(c) (1970).

[1] The Mineral Leasing Act, as amended, 30 U.S.C. § 188(b) (1970), provides that an oil and gas lease on which there is no well capable of producing oil or gas in paying quantities will terminate by operation of law if the annual rental is not paid on or before the anniversary date of the lease. Section 188(c) provides the lease may be reinstated if, among other requirements, it has been shown to the satisfaction of the Secretary that the failure to make timely payment was "either justifiable or not due to a lack of reasonable diligence on the part of the lessee * * *."

Appellants' leases were issued December 1, 1970, so payment of rental was due on or before December 1, 1975. The envelope in which the payment was transmitted bears a postmark of "P.M., December 1, 1975," and was received in the State Office at 10 a.m., on December 2, 1975. As appellants' payment was not made on or before December 1, 1975, the anniversary date of the lease, the leases terminated by operation of law as provided by 30 U.S.C. § 188(b) (1970), and appellants received appropriate notices of termination of the leases. 43 CFR 3108.2-1(c).

Appellants responded by a letter of December 8, 1975, to the State Office, in which they said that they considered the payments to have been made timely and the leases to be in full force and effect. In the alternative, they petitioned for reinstatement of their leases.

The State Office issued its decision on December 15, 1975. First, the decision established that the leases had terminated for failure to timely pay the rental. It stated that the Act of July 29, 1954, 68 Stat. 585, which amended Section 31 of the Mineral Leasing Act, and 43 CFR 3108.2-1(a) clearly require the automatic termination of leases for the failure to pay the full amount of the yearly rent prior to the anniversary date of the lease.

1/ The eight leases involved in this appeal are: U-12871, U-12872, U-12874, U-12875, U-12876, U-12877, U-12878 and U-12881. These leases are held as follows: Constitution Petroleum Company, Inc. (50 percent), East Utah Mining Company (25 percent), and Arrow Petroleum Company (25 percent).

Next, the decision considered appellants' petition for reinstatement in light of 43 CFR 3108.2-1(c)(2) which requires a satisfactory showing that the failure to make rental payment on or before the lease anniversary date was either justifiable or not due to a lack of reasonable diligence on the part of the lessee. The State Office held that mailing the payment after noon the date it was due does not meet the reasonable diligence test. It also decided that appellants' failure to exercise reasonable diligence was not justifiable. 2/

In their statement of reasons, appellants emphasize the details of depositing the check for the rental payment in the mail. Appellants claim that: the check dated December 1, 1975, was enclosed in a properly addressed envelope and deposited in a special U.S. mail pickup box located on 4th South Street, on the south side of the main U.S. Post Office in downtown Salt Lake City, Utah; the BLM office is located in the Federal Building and its Post Office Box #11505 in the Pioneer Post Office Station is in the same building; from information acquired by conference with BLM employees, it appeared that mail so deposited is available to the BLM for pickup at any time during postal hours; mail deliveries are made daily to the Pioneer Station until as late as 5:00 p.m.; 3/ a letter deposited in the special pickup box would normally be collected hourly and processed for transmittal; the general belief in Salt Lake City was that all mail deposited in such special boxes in the early afternoon would be delivered downtown that same afternoon and Constitution employees so believed; the Federal Building, where both the BLM office and the Pioneer Post Office are located, is approximately four city blocks from the main post office; the mail arriving in the Pioneer Post Office is placed in the BLM post office box; all mail not physically picked up by that office before the end of the working day is picked up and stamped as of 10:00 a.m., the following morning; the post office stamp on the envelope was "December 1, P.M., 1975"; the exact time of day, or whether the envelope arrived at Pioneer Station on December 1 or not is not shown.

2/ The decision also found that the lands covered by the lease may have prospective value for oil and gas but are not "known" to contain valuable deposits, as suggested by appellants, so that judicial proceeding was not required for cancellation of the leases. 43 CFR 3108.3.

3/ BLM office hours for receiving documents are from 10:00 a.m. until 4:00 p.m., Monday through Friday. 43 CFR 1821.2-1(a). A BLM clerk checked the postal Box 11505 in the Pioneer Station at 4:00 p.m., on December 1, 1975. Mail thereafter deposited in that box would not be picked up by a BLM employee until the next day, and would then be received as of 10:00 a.m., that day.

Appellants submit that there are two separate circumstances under the law for reinstatement: (1) where the failure was justifiable and (2) where the failure was not due to lack of reasonable diligence. Appellants contend that the Board's decisions are so harsh that unless "illness or death" factor is a causation, there can be no "justifiable excuse for failure to exercise reasonable diligence, since the timely payment" requirement precludes any consideration of "leniency."

This argument was presented to the Board in Louis Samuel, 8 IBLA 268 (1972), in which the Board stated:

* * * It seems self-evident that his language provides two separate grounds for reinstatement. The term "justifiable" is not, however, defined either in the statute or in the regulations, and the legislative history is silent on this point. Appellant contends that since the word "justifiable" has an "equitable ring to it," Congress meant to allow reinstatement of any lease where "considering all of the facts of the case, * * * it would be fair or right to reinstate this particular lease." We think this interpretation would go too far. If the term "justifiable" is defined so as to direct the Department to do that which would be equitable under the circumstances, then the succeeding phrase "or not due to a lack of reasonable diligence on the part of the lessee" would be surplusage of no meaning. Surely it would be inequitable to refuse reinstatement where reasonable diligence had been exercised by the lessee. The canons of construction require that statutes be construed so as to give meaning and effect to each word. The word "justifiable" may have an equitable ring to it, but the bell of its meaning is constructed of different stuff.

8 IBLA at 273.

The Board in Samuel continued by explaining that "justifiable," a subjective test, must be considered in relation to the objective standard of "not due to a lack of reasonable diligence." It was clear to the Board that by "justifiable," Congress was adverting to a limited number of cases, where, owing to factors outside the individual's control, the reasonable diligence test could not be met.

The Board is not insensitive to equitable consideration in reinstatement cases. We realize, however, that based upon the rules of construction discussed above, that the two tests are not mutually exclusive, but are rather interrelated. In the absence of reasonable diligence, a lease may be reinstated if the delay was justifiable, that is, was caused by factors affecting the petitioner's control, and which were the proximate cause of the failure to be on time. This criterion must be met in order for the delay to be justifiable, but the causative factors are not restricted to only illness or death, as appellants indicate. David Kirkland, 19 IBLA 305 (1975).

43 CFR 3108.2-1(c)(2) provides that reasonable diligence normally requires that annual rental payments be sent sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of mail. Sara Turcsan, 23 IBLA 370 (1976); William N. Cannon, 20 IBLA 361 (1975); Charles L. Parks, 18 IBLA 404 (1975). Appellants did not exercise reasonable diligence by mailing the payment after noon on the day it was due. Appellants urge that failure to make timely payment should be excused because they believed, and it was the general belief, that in Salt Lake City, all mail deposited in the "special boxes" in the early afternoon would be delivered downtown that afternoon.

Appellants submitted an affidavit from the Postmaster in Salt Lake City to support their belief. The Postmaster said that under a former mail delivery program, a letter deposited in the special pickup box would probably have been processed and canceled within approximately 1 hour's time and transmitted to the Pioneer Station in the Federal Building where it could have been available for pickup by the government office addressee in the same building on the same day.

The BLM also directed an inquiry to the Postmaster concerning the availability of a letter which was posted near the main Post Office after 2:00 p.m., on December 1, 1975, and he responded:

If the letter was deposited after 2:00 p.m. and prior to approximately 5:30 p.m. and it was properly addressed, including the correct zip code, in normal mail handling procedures it should have been available for pickup the following day. Normal service standards are overnight for first class, properly zip coded, mailed locally for delivery to a local address.

Our mail condition was such that delivery might not have been effected on the day it should have been.

Appellants believed in and relied on a postal system which was passe at the time the rental payment was mailed. Even if the belief had been based on the current policy of the post office, reliance on such belief would not have been helpful to appellants because they did not allow for any leeway for possible delay as required by 43 CFR 3108.2-1(c)(2). See Schubert Byers, 17 IBLA 255 (1974).

The reason for the delay in mailing the payment is explained by the appellants as follows:

Prior to the deposit of the payment check as stated above, Constitution was expecting some communication in the mail pertinent to said payments. The payment check was held in the office until the regular single delivery of mail to Constitution on December 1st arrived, at or around noon, in order to deposit any participating checks received from other owners, which when deposited would have obviated the necessity of additional bookkeeping by Constitution. After the mail had been delivered, the then necessary transfer of funds was accomplished and the letter was deposited in the special pickup mailbox on 4th South Street (Exhibit "B"). The transactions probably took until around 2:00 P.M. and the deposit in the mail was made around that time or within a reasonably short period thereafter (Exhibit "C"). [Emphasis added.]

It is thus clear that the delay was deliberate and purposeful on the part of appellants, and that they were motivated more by concern for their own convenience than by a diligent concern to insure that the payment was received timely in the proper office of the Bureau. The affidavits of two of appellants' employees describe how, after the rental check was prepared, they waited for the incoming mail delivery. After the mail arrived they went to lunch and completed "certain banking transactions." It was only then ("around 2:00 P.M." on the due date, "or within a reasonably short period thereafter") that the check was deposited in a mail box within walking distance of the office where the payment was due that day.

Considering the proximity of appellants' office to the BLM State Office and the time element involved, it seems that the only diligent course of action at this time would have been to go to the State Office on December 1, 1975, and personally deliver the rental payment before 4:00 p.m.

Appellants argue that the regulation requiring receipt of payment by 4:00 p.m., on the anniversary date seems to be an unconscionably harsh rule. Appellants allude to other rules including the Internal Revenue Service regulation which recognizes the postal stamp showing mailing on the day a particular document is due, as sufficient and binding. The regulations of this Department concerning the timely payment of lease rentals, which make the time of receipt the effective date, govern this matter and not the regulations of the Internal Revenue Service relating to income tax returns. Frank J. Germano, 18 IBLA 390 (1975).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques

Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

